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HOBBY LOBBY STORES, INC.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

HOBBY LOBBY STORES, INC.,
Plaintiff,

vs.

FRANK KOVACS and MAUREEN
KOVACS,
Defendants.

CASE NO.
COMPLAINT

TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS:

PLEASE TAKE NOTICE that Plaintiff Hobby Lobby Stores, Inc. (“Hobby Lobby”), by and through its attorneys, Ford & Harrison LLP and Pearlstein & McCullough LLP, as and for its Complaint, alleges as follows:

PRELIMINARY STATEMENT

1. In this action, Plaintiff Hobby Lobby asserts a claim for fraud against Frank Kovacs (“Mr. Kovacs”) and Maureen Kovacs (“Mrs. Kovacs”) (together, the “Kovacs”) in connection with an ancient Mesopotamian cuneiform tablet bearing part of the Epic of Gilgamesh, c. 1600 BC (the “Tablet”). Pursuant to a Private Sale Agreement dated July 14, 2014 (the “Private Sale Agreement”) between (i) Hobby Lobby, as Buyer, and (ii) Christie’s, Inc. (“Christie’s”) and Joseph David

1 Hackmey (“Hackmey”), as Seller (together, the “Sellers”), Hobby Lobby purchased
2 the Tablet from the Sellers (the “Purchase”) for \$1,674,000 (the “Purchase Price”).

3 2. On May 18, 2020, the United States filed a Verified Complaint In Rem
4 in the Eastern District of New York (“EDNY”) against the Tablet alleging that the
5 Tablet was imported by an “Antiquities Dealer” in violation 19 USC
6 §1595a(c)(1)(A) (the “Forfeiture Action”). The predicate offense under §1595a
7 was the fact that the Tablet was stolen Iraqi cultural property under the National
8 Stolen Property Act, 18 USC §2314, that was imported into the United States by the
9 “Antiquities Dealer” in 2003. Unknown to Hobby Lobby at the time, Mr. Kovacs
10 was the unnamed “Antiquities Dealer” mentioned in the Forfeiture Action.

11 3. Prior to the Purchase, the Sellers made statements to Hobby Lobby
12 concerning the Tablet’s provenance (i.e., its history of ownership and chain of title)
13 by (i) presenting Hobby Lobby with a false sale history created by Mr. Kovacs
14 about a 1981 sale of the Tablet in the United States that disguised the illegal
15 importation of the object into the United States after 1990 and (ii) excluding Mr.
16 Kovacs’s name from the provenance. The exclusion of Mr. Kovacs’s name from
17 the provenance prevented Hobby Lobby and governmental authorities in both the
18 United Kingdom and the United States from discovering the falsity of the fictitious
19 sale history. [Redacted Text].

20 4. [Redacted Text].

21 5. On July 15, 2021, the United States filed an Amended Verified
22 Complaint In Rem seeking the Tablet’s forfeiture based upon (i) Mr. Kovacs’s
23 illegal importation of the Tablet in 2003 and (ii) Christie’s illegal importation of the
24 Tablet in 2014. On the same day, the United States and Hobby Lobby entered a
25 Stipulation of Forfeiture in which the parties agreed that the Tablet was imported by
26 Mr. Kovacs in 2003 and by Christie’s in 2014 in violation 19 USC
27 §1595a(c)(1)(A). The predicate offenses in violation of §1595a were Mr. Kovacs’s
28 and Christie’s’ (i) smuggling of the Tablet into the United States in 2003 and 2014,

1 and ii) knowing importation of the Tablet in violation of 19 USC §2609, as the
 2 Tablet was designated archaeological material exported from Iraq after August
 3 1990.

4 6. The court entered a Decree of Forfeiture on July 25, 2021. As a
 5 result, Hobby Lobby lost both the Tablet and the entire value of the Purchase Price
 6 it paid to the Sellers.

7 **THE PARTIES**

8 7. Plaintiff Hobby Lobby Stores, Inc. is a corporation formed under the
 9 laws of the state of Oklahoma with its principal place of business at 7707 SW 44th
 10 Street, Oklahoma City, Oklahoma, 73139.

11 8. Upon information and belief, Defendants Mr. Kovacs and Mrs. Kovacs
 12 are individuals residing in the state of California at 427 Manzanita Ave., Corte
 13 Madera, CA 94925.

14 **JURISDICTION AND VENUE**

15 9. This Court has subject matter jurisdiction over this action pursuant to
 16 28 U.S.C. §1332(a) because there is complete diversity of citizenship between the
 17 parties and the amount in controversy exceeds \$75,000, exclusive of interest and
 18 costs.

19 10. Venue is proper in this District pursuant to 28 U.S.C. §1391(b)(1)
 20 because the Defendants are subject to the court's personal jurisdiction with respect
 21 to this action.

22 **ALLEGATIONS**

23 **Mesopotamian Cuneiform Tablets on the International Art Market**

24 11. Cuneiform, one of the earliest systems of writing, was created and
 25 used by the Sumerians in ancient Mesopotamia, who formed characters by
 26 impressing triangular-shaped wedges into wet clay tablets. The term cuneiform
 27 comes from cuneus, Latin for "wedge."

28 12. Cuneiform tablets have been collected by museums and private

collectors in the United States since the 19th century. However, from the inception of the First Gulf War in 1990, the United States has maintained a ban on imports of cultural property originating in Iraq under (i) a series of UN Security Council Resolutions and Executive Orders issued by Presidents George H.W. Bush and George W. Bush,¹ (ii) 2004 Congressional authorization providing the President with authority under the Convention on Cultural Property Implementation Act,² and (iii) comprehensive sanctions regulations issued by the Department of Treasury.³ Since 1990, these laws and regulations have, among other things, made illegal the importation of ancient cuneiform objects removed from Iraq after August 1990.

13. To comply with applicable United States' import laws, prudent, law-abiding cuneiform collectors are careful to deal only in objects with an ownership history dating prior to 1990, establishing that the object was outside of Iraq as of that date.

14. Collectors also rely on the expertise of sophisticated art sellers, such as established antiquities dealers and auctioneers, to verify an object's legal ownership. Accordingly, the sale of an object at a reputable dealer or auctioneer indicates to the art market that the dealer or auctioneer considers the object to be legally owned, and the art market, in turn, relies on that imprimatur of legality with respect to future sales, loans, and exhibitions.

The Tablet

15. The best-known piece of literature from ancient Mesopotamia is the story of Gilgamesh, a legendary ruler of Uruk, and his search for immortality. The

¹ Executive Order 12722 of August 3, 1990; United Nations Security Council Resolution No. 661 of August 6, 1990; Executive Order 12724 of August 13, 1990; United Nations Security Council Resolution 1483; and Executive Order 13350 of July 30, 2004.

² The Emergency Protection for Iraqi Cultural Antiquities Act of 2004 (title III of Pub. L. 108-429); Final rule, Import Restrictions Imposed on Archaeological and Ethnological Material of Iraq, Federal Register, Vol. 73, No. 84, Wednesday, April 30, 2008, at p. 2334 (available at <https://www.govinfo.gov/content/pkg/FR-2008-04-30/pdf/E8-9343.pdf>).

³ Iraq Stabilization and Insurgency Sanctions Regulations, codified at 31 C.F.R. part 576, were promulgated in a Final Rule by the Department of the Treasury's Office of Foreign Assets Control on September 13, 2010.

1 Epic of Gilgamesh is a voluminous work, the longest piece of literature in
2 Akkadian, the language of Babylonia and Assyria. It was known across the ancient
3 Near East, with versions also found at Hattusas (the capital of the Hittites), Emar in
4 Syria, and Megiddo in the Levant.

5 16. The Tablet was likely created during the First Sealand Dynasty, circa
6 early sixteenth century, B.C., in the middle Babylonian period. Sealand refers to a
7 province in the far south of Babylonia, a swampy region between the mouths of the
8 Tigris and Euphrates rivers in modern-day Iraq.

9 17. Upon information and belief, the Tablet was first seen on the
10 international art market by Mr. Kovacs and Mrs. Kovacs in 2001 while the Tablet
11 was in the possession of a Jordanian antiquities dealer in London. In 2003, Mr.
12 Kovacs' purchased the Tablet in London and imported it into the United States.

13 18. In February 2007, Mr. Kovacs sold the Tablet to a pair of buyers
14 ("2007 Buyers") for \$50,000 without supplying a provenance, but later, upon
15 request, supplied the 2007 Buyers with a provenance that, according to a sworn
16 statements by Mr. Kovacs and Mrs. Kovacs, was fictitious, i.e., that the Tablet had
17 been part of an auction sale on August 20, 1981, at Butterfield and Butterfield, San
18 Francisco ("Butterfield's"), lot number 1503 (the "Butterfield's Provenance"). Mr.
19 Kovacs memorialized the Butterfield's Provenance in a Statement to the 2007
20 Buyers (the "False Provenance Statement"). Specifically, the False Provenance
21 Statement represented that the Tablet had been purchased as part of lot 1503 at the
22 Butterfield's auction "in a lot of miscellaneous objects including several other
23 antiquities, none of them completely described" and "was said to have been
24 deaccessioned from a small museum."

25 19. Upon information and belief, in 2007, the 2007 Buyers sold or
26 consigned the Tablet to Michael Sharpe Rare and Antiquarian Books in Pasadena,
27 California ("Michael Sharpe") using the Butterfield's Provenance. Michael Sharpe
28 published a catalogue including the Tablet with an asking price of \$450,000.

20. Upon information and belief, Hackmey purchased the Tablet from Michael Sharpe in 2007.

Christie's Sale of the Gilgamesh Tablet

21. In December 2013, Hackmey consigned the Tablet to Christie's in London for private sale.

22. Hackmey, in connection with the consignment, provided Christie's with, inter alia, the False Provenance Statement produced by Mr. Kovacs which, upon information and belief, Hackmey had obtained in connection with his purchase of the Tablet from Michael Sharpe.

23. [Redacted Text].

24. In late December 2013, Georgiana Aitken ("Aitken"), Christie's Head of Antiquities in London, spoke with Mr. Kovacs over the phone [Redacted Text].

25. [Redacted Text].

26. [Redacted Text].

27. Christie's prepared, [Redacted Text], a private sale catalogue for potential purchasers (the "Private Sale Catalogue") that described the Tablet and set forth a provenance omitting Mr. Kovacs's name. It read as follows:

Provenance

Butterfield and Butterfield, San Francisco, 20 August 1981, lot 1503. with Michael Sharpe Rare and Antiquarian Books, Pasadena, California[.]

28. [Redacted Text].

29. In March 2014, Christie's contacted Hobby Lobby to solicit Hobby Lobby's interest in the Tablet. Hobby Lobby, through an agent, viewed the Tablet at Christie's in London. As Christie's was aware, Hobby Lobby was active in the private art market in building a biblical antiquities collection to serve as the base collection for a new museum planned to be built in Washington, DC, the Museum of the Bible ("MOTB").

30. Christie's International Head of Books, Margaret Ford ("Ford")

1 provided Hobby Lobby with the Private Sale Catalogue containing the fraudulent
2 provenance. Hobby Lobby had no basis to question the accuracy of that
3 provenance and the parties proceeded to reach agreement for Hobby Lobby to
4 purchase the Tablet, eventually entering into the Private Sale Agreement.

5 31. Prior to consummating the Purchase, Hobby Lobby asked Christie's to
6 provide it with all the information and documents Christie's possessed to support
7 the provenance in the Private Sale Catalogue. [Redacted Text].

8 32. On July 15, 2014, Ford notified Hobby Lobby that the Tablet had been
9 imported into the United States and presented Hobby Lobby with a Private Sale
10 Agreement for the purchase.

11 33. On July 24, 2014, pursuant to the Private Sale Agreement, Hobby
12 Lobby agreed to purchase the Tablet for the \$1,674,000 Purchase Price. Hobby
13 Lobby wired the Purchase Price to Christie's' bank account on July 30, 2014.

14 34. In September 2014, Ford personally delivered the Tablet to Hobby
15 Lobby from New York to Oklahoma City by plane.

16 **Christie's Reaffirmation of the Fictitious Provenance in 2017**

17 35. After the Purchase, Hobby Lobby transferred possession of a group of
18 objects, including the Tablet, to MOTB. The Tablet was to be included in the
19 initial display at MOTB's opening on November 17, 2017. Prior to the opening in
20 2017, Hobby Lobby through MOTB asked Christie's to reaffirm the Butterfield's
21 Provenance. In addition, an MOTB representative asked a Christie's representative
22 to provide the names of the Tablet's owners prior to Michael Sharpe.

23 36. In response to Hobby Lobby's request through MOTB, representatives
24 of Christie's Antiquities Department in London (i) provided Hobby Lobby and the
25 MOTB with additional but incomplete documentation concerning the Tablet's
26 provenance, and (ii) after unsuccessfully attempting to contact Mr. Kovacs in the
27 fall of 2017, represented to Hobby Lobby and MOTB that the Butterfield's buyer
28 (Mr. Kovacs) had confirmed the accuracy of the Butterfield's Provenance in 2014.

1 37. [Redacted Text].

2 38. In October 2017, MOTB, unaware that Mr. Kovacs was the former
3 owner of the Tablet, contacted Mrs. Kovacs to seek information from Mrs. Kovacs
4 about the origin of the Tablet because MOTB was told that Mrs. Kovacs had
5 translated the writing on the Tablet. Neither Mrs. Kovacs nor Mr. Kovacs returned
6 MOTB's call.

7 39. Hobby Lobby and MOTB, provided with an incomplete provenance
8 and denied any means by which it could pursue further inquiries concerning the
9 provenance, accepted Christie's' reassurances, crediting Christie's' reputation as
10 the world's largest and most renowned auction house.

11 **The Government's Seizure of the Tablet**

12 40. On September 24, 2019, agents from the Department of Homeland
13 Security, Immigration and Customs Enforcement ("ICE") appeared at MOTB and
14 seized the Tablet pursuant to an ongoing investigation of the Tablet's origin and its
15 importation into the United States.

16 41. [Redacted Text].⁴

17 42. [Redacted Text].

18 43. Prior to learning of the foregoing, Hobby Lobby was unaware of the
19 Tablet's false provenance, having been prevented, both in 2014 and in 2017, from
20 learning of the problems with the provenance.

21 **The Government's Forfeiture Action**

22 44. On May 18, 2020, the U.S. Attorney's Office for the Eastern District
23 of New York ("EDNY DOJ") commenced the Forfeiture Action in the EDNY,
24 entitled "*United States v. One Cuneiform Tablet known as the 'Gilgamesh Dream*
25 *Tablet'*" (Index No. 20 CV 2222 (EDNY)), to recover the Tablet based on evidence
26 it claimed established that the Tablet was stolen from Iraq and illegally imported
27

28 ⁴ [Redacted Text]

1 into the United States by the “Antiquities Dealer” in 2003.

2 45. On June 23, 2020, Hobby Lobby filed a Verified Claim in the
3 Forfeiture Action. [Redacted Text].

4 46. [Redacted Text].

5 **Hobby Lobby’s Lawsuit Against Christie’s and Hackmey**

6 47. On May 19, 2020, Hobby Lobby filed a lawsuit in the EDNY for
7 breach of contract and fraud against Christie’s Inc. and the Tablet’s owner,
8 Hackmey. *Hobby Lobby Stores, Inc. v Christie’s and John Doe #1*, No. 20 CV
9 2239 (EDNY). At the time, Hackmey was unknown to Hobby Lobby because the
10 Forfeiture Complaint did not name Hackmey personally.

11 48. On February 1, 2021, Hobby Lobby filed an amended complaint
12 against Christie’s and Hackmey, this time including Hackmey as a named
13 defendant. *Hobby Lobby Stores, Inc. v. Christie’s Inc. and Joseph David*
14 *Hackmey*, No. 20-CV-2239 (EDNY). [Redacted Text].

15 49. On December 2, 2021, and pursuant to a settlement agreement, Hobby
16 Lobby, Christie’s, and Hackmey agreed to voluntarily dismiss, with prejudice, all
17 claims and causes of action asserted by Hobby Lobby in the lawsuit pursuant to
18 Fed. R. Civ. P. 41(a)(1)(A).

19 **FIRST CLAIM FOR RELIEF**

20 **(Fraud)**

21 50. Hobby Lobby repeats and realleges each allegation set forth in
22 paragraphs 1 through 49, inclusive, as if set forth herein.

23 51. [Redacted Text].

24 52. [Redacted Text].

25 53. [Redacted Text].

26 54. [Redacted Text].

27 55. [Redacted Text].

28 56. [Redacted Text].

1 57. [Redacted Text].

2 58. Mr. and Mrs. Kovacs were contacted by a member of staff at MOTB in
3 2017 about Mrs. Kovacs role in the translation of the Tablet's cuneiform writing.
4 Neither Mr. Kovacs nor Mrs. Kovacs alerted MOTB and Hobby Lobby that the
5 provenance information and other documents they provided to Christie's were false.

6 59. By reason of the foregoing, Hobby Lobby has been damaged as a
7 proximate cause of Kovacs' deceitful and fraudulent conduct and is entitled to
8 recover a portion of the Purchase Price, [Redacted Text], together with interest
9 from July 2014 and attorney's fees and costs.

10 60. Hobby Lobby is entitled to punitive damages against the Kovacs'
11 because they engaged in an intentional tort and/or engaged in willful misconduct
12 [Redacted Text].

13 DEMAND FOR RELIEF

14 WHEREFORE, Hobby Lobby demands judgment against the Defendants,
15 jointly and severally, as follows:

16 (a) Requiring Defendants to pay \$[Redacted Text], which is excess of the
17 jurisdictional minimum under 28 U.S.C. § 1332, to Hobby Lobby together with
18 interest from July 2014 as allowed by law;

19 (b) Awarding Hobby Lobby punitive damages;

20 (c) Awarding Hobby Lobby all attorneys' fees and expenses and other
21 costs it has incurred in this action; and

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1 (d) Granting any further and different relief as the Court deems just and
2 proper.

3
4 Dated: May 18, 2022

Respectfully submitted,
FORD & HARRISON LLP

5
6 By: /s/ Jennifer S. McGeorge
7 Terry L. Higham
8 Jennifer S. McGeorge
9 Attorneys for Plaintiff
10 HOBBY LOBBY STORES, INC.
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PLAINTIFF'S DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff Hobby Lobby Stores, Inc. demands trial by jury in this action of all issues so triable.

Dated: May 18, 2022

Respectfully submitted,
FORD & HARRISON LLP

By: /s/ Jennifer S. McGeorge
Terry L. Higham
Jennifer S. McGeorge
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